B45.03.A Verdict Form A--Single Plaintiff and Claimed Multiple Tortfeasors— Comparative Negligence--Verdict for Plaintiff Against Some But Not All Defendants

VERDICT FORM A

We, the jury, find for [plaintiff's name] and against the following defendant or defendants:

Name of defendant 1	Yes _____	No _____
Name of defendant 2	Yes _____	No _____
Name of defendant 3	Yes _____	No _____

We further find the following:

First: Without taking into consideration the question of reduction of damages due to the [negligence] [other damage reducing defense] of [plaintiff's name], if any, we find that the total amount of damages suffered by [plaintiff's name] as a proximate result of the occurrence in question is $_____, itemized as follows:

The reasonable expense of past medical and medically related expenses:	$_____
(Other damages, insert from IPI 30 series)	$_____
PLAINTIFF'S TOTAL DAMAGES:	$_____

Second: Assuming that 100% represents the total combined legal responsibility of all [persons] [or] [entities] who [that] proximately caused [plaintiff's name] injury, we find the percentage of legal responsibility attributable to each as follows:

a) Plaintiff's name	_____%
b) Defendant #1's name	_____%
c) Defendant #2's name	_____%
d) Other[1]	_____%

[1] Under *Bofman v. Material Service Corporation*, 125 Ill.App.3d 1053, 1064 (1st Dist. 1984) and *Smith v. Central Illinois Public Service Company*, 176 Ill.App.3d 482 (4th Dist. 1988), in a case where there is a potential finding of contributory fault by the plaintiff, the jury should evaluate the fault of non-parties because "it is essential for determining liability commensurate with degree of total fault." The fault of the settling parties, however, should

TOTAL 100%

(*Instructions to Jury: If you find that plaintiff was not [contributorily negligent] [other damage reducing defense], or if you find any other party listed on the verdict form was not legally responsible in a way that proximately caused plaintiff's injury, you should enter a zero (0)% as to that party.*)

Third: After reducing the plaintiff's total damages [(from paragraph First)] by the percentage of [negligence] [other damage reducing defense], if any, of ____ [(from line (a) in paragraph Second)], we award [plaintiff's name] recoverable damages in the amount of $_____

[*Signature lines*]

Verdict Form, Notes and Comment revised January 2010. Notes revised May 2010.

Notes on Use

This instruction should be used when there is a claim of contributory fault of the plaintiff and multiple defendants. If there is no claim of contributory fault, use IPI Civil B45.03A2. If contribution is sought against third-party defendants, use IPI 600.14 or 600.14A.

The bracketed itemization of damages in paragraph [First] should be used in any case where itemization of damages is required under 735 ILCS 5/2-1117 (joint and several liability) or if requested pursuant to 735 ILCS 5/2-1109, by any party. Also, if requested, each element of damages should be further itemized to provide separate lines for past and future loss pursuant to 735 ILCS 5/2-1109 (economic loss) and *Maddox v. Rozek*, 265 Ill. App. 3d 1007, 1011, 639 N.E.2d 164, 167, 203 Ill. Dec. 125, 128 (1st Dist. 1994) (non-economic loss). See also *Doering v. Janssen*, 76 Ill. App. 3d 62, 67, 394 N.E.2d 721, 725, 31 Ill. Dec. 519, 523 (3d Dist. 1979) where the court held it was not error to submit an itemized verdict form for both economic and noneconomic loss with separate lines for past and future damages.

Fill in the names of the parties and others before submitting this form to the jury.

Where "Defendant A," "Defendant B," etc. appear, insert the names of each defendant on a separate line. Provision is made for the possible inclusion on the verdict form of tortfeasors who are not parties.

This instruction, or a variation of it, should be used in cases where there is one plaintiff and more than one defendant. If there are multiple counts, the operative paragraphs may need to be repeated for each count with the count identified, e.g. "under Count."

In the event that any party moves for a separate verdict on any count, separate verdicts in addition to this verdict must be submitted. 735 ILCS 5/2-1201(c).

The committee believes that the italicized language could be helpful to explain the verdict form to the jury.

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be disregarded for purposes of the 2-1117 calculation. *Ready v. United/Goedecke Services, Inc.*, 232 Ill.2d 369, 385 (2008)

Comment

This computational verdict form is to be used in cases involving a single plaintiff and more than one entity which could or might have caused the plaintiff's injury or damage, and where comparative negligence, contribution between defendants or joint and several liability is an issue. IPI 600.14 is identical to this instruction, with the addition of a paragraph in that instruction providing for express findings for or against third-party defendants. Because there are many issues in common between the use of a verdict form involving multiple tortfeasors (but not contribution) and cases which do involve contribution, this comment is a combined discussion of matters pertaining to both this instruction and IPI 600.14.

Four verdict forms (IPI B45.03A, B45.03A2, 600.14 and 600.14A) are intended to reflect the jury's findings as to damages and fault, which provide the data for the calculations necessary to the entry of a judgment or judgments.

The need for the jury to consider the fault of nonparty tortfeasors arose subsequent to the adoption of comparative negligence in *Alvis v. Ribar*, 85 Ill.2d 1 (1981). Consideration of the negligence of both parties and non-parties to an action is essential for determining liability commensurate with degree of total fault." *Bofman v. Material Serv. Corp.*, 125 Ill.App.3d 1053 (1st Dist. 1984). In cases where contributory negligence is involved, it is permissible to introduce evidence of the liability of a non-party. The liability of non-party tortfeasors may be considered in order to determine the extent of plaintiff's responsibility for his injuries." *Smith v. Central Ill. Pub. Serv. Co.*, 176 Ill.App.3d 482 (4th Dist. 1988). *See also American Motorcycle Ass'n v. Superior Court*, 20 Cal.3d 578, 146 Cal.Rptr. 182, 190, 578 P.2d 899, 906 (1978).

In Bofman, a plaintiff was able to obtain reversal of a verdict because the jury was not properly instructed to account for the negligence of a settled nonparty. While Ready v. United/Goedecke Services, Inc., 232 Ill.2d 369 (2008) held that the percentage fault of a defendant who settled is not part of the calculation under 735 ILCS 5/2-1117, that case did not reduce the vitality of Bofman or Smith. If the jury hears evidence to suggest fault on the part of settled parties and if contributory negligence is claimed, the settled parties should be listed on the verdict form to correctly determine the percentage contributory fault of the plaintiff. The fault of the settling parties, however, should be disregarded for purposes of the 2-1117 calculation. Ready, supra at 385 ("We hold that section 2-1117 does not apply to good-faith settling tortfeasors who have been dismissed from the lawsuit."). See also, Heupel v. Jenkins, _ N.E.2d _, 2009 WL 3762941 (1st Dist. 2009).

Persons or entities that were never sued are not part of the 2-1117 calculation either. *Jones v. DHR Cambridge Homes, Inc.*, 381 Ill.App.3d 18, 31-32, 885 N.E.2d 330 (1st Dist. 2008).

Before this form of verdict was adopted, two separate forms were used, which permitted inconsistent calculations by the jury of plaintiff's fault and the 2-1117 calculation. That inconsistency led to a reversal in *Hackett v. Equip. Specialists, Inc.*, 201 Ill.App.3d 186 (1st Dist. 1990). In *Hackett*, the jury found the defendant to be 55% at fault with respect to the plaintiff, but not at fault at all with respect to the third-party defendant. The appellate court held that the fault of the defendant could not simply have disappeared for contribution purposes. This form of verdict should prevent similar problems.

If contribution claims are tried simultaneously with the plaintiff's underlying action, this verdict form (in the event of only counterclaims among defendants) or IPI 600.14 (in the event of third-party claims) is to be used as the form of verdict for both the plaintiff's claim and those contribution claims. This verdict form is also to be used in those cases where contribution is not sought but where one or more defendants seek to be held only severally liable.

This form eliminates the need for separate calculations or allocations by the jury for comparative

negligence, joint and several liability, and contribution. Further, it was designed to provide the bar with sufficient resemblance to the prior verdict forms such that the transition would be comfortable. Although it is not practically or legally necessary, provision is made for the jury to continue the former practice of calculating the plaintiff's net recovery by reducing the plaintiff's total damages by the plaintiff's fault.

Burke v. 12 Rothschild's Liquor Mart, 148 Ill.2d 429 (1992), holds that a willful and wanton tortfeasor cannot use the plaintiff's comparative negligence to reduce damages. *Ziarko v. Soo Line R.R.*, 161 Ill.2d 267 (1994), holds that "a defendant found guilty of willful and wanton conduct may seek contribution from a defendant found guilty of ordinary negligence if the willful and wanton defendant's acts were found to be simply reckless and thus were determined to be less than intentional conduct." *Ziarko* and *Burke* raise a number of comparative fault issues among all parties that must be considered in the preparation and use of instructions and verdict forms.

First, if it is known prior to the submission of the case to the jury that one of the defendants can be liable *only* upon a willful and wanton theory, the calculation of the percentage to be attributable to that defendant's conduct may still be an issue for the jury's consideration, even if that defendant is not entitled to a reduction of damages for comparative negligence purposes. Both the plaintiff (for comparative negligence purposes as to the other defendants) and the other defendants and third-party defendants (for several liability purposes, and perhaps for contribution purposes) might wish to argue that the percentage of causation attributable to the willful and wanton defendant be compared with the rest of the causal fault.

Second, a particular defendant might be liable for (1) negligent conduct, (2) "reckless" willful and wanton conduct, or (3) that type of willful and wanton conduct described in Ziarko as "intentional." If the plaintiff's case and the contribution issues are submitted together to the same jury, the court must determine: (1) the allowable basis of comparison between the party or parties found to be negligent and the party or parties whose fault was willful and wanton; (2) whether any aspect of those issues is to be decided by the court as a matter of law as opposed to being determined by the jury; and (3) the extent to which any willful and wanton defendant's fault is not considered in allocating fault. The committee takes no position on these issues.

Because of the absence of case law on various issues, the committee does not yet have sufficient guidance from the courts to draw instructions that would expressly accommodate every situation. In the meantime, it is anticipated that most cases can be tried using these forms and instructions accompanied by special interrogatories on the issue of willful and wanton conduct.

The committee recommends that a non-party not be included on the verdict form until the trial judge first makes the determination that sufficient evidence has been presented to support a jury finding of fault with respect to that nonparty. Assuming sufficient evidence is presented and if the jury will need to decide whether plaintiff was contributorily negligent, then the non-party should be listed on the verdict form based on *Bofman, supra,* and *Smith, supra*. If there is no issue of contributory negligence, the Committee recommends against including non-parties on the verdict form. *Ready, supra* at 385; *Jones, supra* at 31.